



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0043; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BD13

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Black-capped Petrel With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; document availability and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 9, 2018, proposed rule to list the black-capped petrel (*Pterodroma hasitata*) as a threatened species under the Endangered Species Act of 1973, as amended (Act), with a rule issued under section 4(d) of the Act to provide for the conservation of this species. We are reopening the comment period to present significant new information we have received since 2018 that is relevant to our consideration of the status of the black-capped petrel and allow interested parties to comment. Comments submitted during the 2018 comment period do not need to be resubmitted and will be fully considered in preparation of our final rule. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

DATES: The comment period for the proposed rule published on October 9, 2018, at 83 FR 50560 is reopened. We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**,

below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2018-0043, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2018-0043, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more information).

Availability of supporting materials: Supporting materials including the new information are available at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2018-0043.

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, caribbean_es@fws.gov; telephone 786–244–0081. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2018, we proposed to list the black-capped petrel as a threatened species with a rule issued under section 4(d) of the Act to provide for the conservation of this species (83

FR 50560). Please refer to the 2018 proposed rule for information about the black-capped petrel, its status, its threats, and a summary of factors affecting the species. The proposed rule also includes detailed descriptions of previous Federal actions concerning this species. At the time of the proposed rule, we also publicly made available the Species Status Assessment (SSA) report that includes additional details regarding the species. The SSA report (version 1.1; Service 2018) can be found at <https://www.regulations.gov>, docket no. FWS-R4-ES-2018-0043, as Supporting and Related Materials.

Since the 2018 proposed rule, we have received new or updated information regarding the black-capped petrel's life history, range, habitat, and factors influencing the species' viability. The information indicates the magnitude of threats is likely greater than we had previously assessed. A description of the new information is provided below.

New Information

New information associated with the species' occurrence at sea indicates an expansion of the species' range within the northern Gulf of Mexico. Recent sightings of individual black-capped petrels in the central and northeastern Gulf of Mexico show greater use of this marine region by the species than previously documented, resulting in a confirmed range expansion (Jodice et al. 2021, entire). Additionally, recent satellite tracking studies of individual black-capped petrels identified near-shore areas off the northern coast of Central and South America as areas where the species forages during the breeding season, and these areas may have previously been overlooked or underestimated (Leopold et al. 2019, entire).

The new information also includes updated data on the amount and condition of the species' nesting areas. The black-capped petrel is known to nest only on the island of Hispaniola in high-elevation areas in Haiti and Dominican Republic. The currently known nesting areas include three in Haiti (Pic Macaya, Pic La Visite, and Morne Vincent) and three in Dominican Republic (Sierra de Bahoruco/Loma del Toro, Valle Nuevo National Park, and Loma Quemada). The amount of suitable nesting habitat is 70 percent less than what we previously estimated in

2018 (Satgé et al. 2021, pp. 583–586). We also now have recent nesting data from survey results on Hispaniola for years beyond 2018; however, not all sites were surveyed each year (Brown and Jean 2020, entire; Brown and Jean 2021, entire; International Black-capped Petrel Conservation Group (IBPCG) 2019, pp. 2–4; IBPCG 2020, pp. 3–4; IBPCG 2021, pp. 3–4; IBPCG 2022, pp. 3–4). Across all nesting colonies, the total number of breeding adults at each site is uncertain.

The nesting colony at Pic Macaya in Haiti once accounted for 5 percent of the total breeding population; however, the habitat conditions have deteriorated, and no nesting has been detected here in the past 20 years. Ongoing impacts to the species and its nesting habitat in this area include fires, invasive mammals, deforestation, and habitat loss (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. A2-84), with up to 56 percent of total forest cover lost in the period 2000–2018 (Satgé et al. 2021, p. 586). This site is considered extirpated, based on recent surveys that did not detect any nesting activity at this site.

Pic La Visite in Haiti includes the most significant breeding colony of the black-capped petrel and includes nearly half of the total known breeding population for the species. In 2021, one study found low nest success with only 16 of 35 nests fledging a chick (Brown and Jean 2021, pp. 2, 4). All known nests are concentrated in an area of roughly 2.5 acre (ac) (1 hectare (ha)) (IBPCG 2021, entire; Wheeler et al. 2021, pp. 10, A2-73). New information regarding the Pic La Visite nesting area indicates the ongoing deforestation due to agricultural encroachment is accelerating (Hedges et al. 2018, entire).

The Morne Vincent nesting area in Haiti is approximately 32 ac (13 ha) (Wheeler et al. 2021, p. A2-75). During the most recent surveyed nesting season (2020–2021), an 87 percent success rate was reported for the 15 nests monitored (Brown and Jean 2020, p. 3; IBPCG 2021, p. 4). The primary cause of nest failure is predation (Wheeler et al. 2021, p. 16).

The Loma del Toro nesting area is in the Sierra de Bahoruco of the Dominican Republic and is approximately 370 ac (150 ha) (Wheeler et al. 2021, p. A2-77). Since 2018, cumulative monitoring of 95 petrel nesting attempts suggests that overall success rates (53 percent) are lower

than the nearby Morne Vincent nesting area in Haiti (IBPCG 2018, entire; IBPCG 2019, entire; IBPCG 2020, entire; IBPCG 2021, entire). During the recent petrel nesting season (2021–2022), nest success estimated from the 23 nests monitored in this colony declined to 22 percent (E. Rupp, Grupo Jaragua, in litt). Historical estimates of nest success in this area are unavailable prior to the introduction of exotic mammals into black-capped petrel habitat. Deforestation is occurring in the vicinity of the known black-capped petrel nesting area, where an 11 percent decrease in forest cover was documented from 2000 through 2018 (Satgé et al. 2021, p. 583). Moreover, extensive forest fires and severe nest predation by stray dogs have occurred in this nesting area (IBPCG 2021, p. 1).

Valle Nuevo National Park, Dominican Republic, was a suspected nesting area prior to 2017 when nesting was confirmed. To date, 13 black-capped petrel nests have been identified within an area of approximately 35 ac (14 ha) (Wheeler et al. 2021, p. A2-81; IBPCG 2021, p. 4). As with all other black-capped petrel nesting colonies, petrels nesting in Valle Nuevo face the threats of agricultural activities, invasive mammals, habitat loss, and communication towers (Goetz et al. 2012, p. 5; Wheeler et al. 2021, pp. 12–16), in addition to the increasing threat posed by encroachment of invasive ferns, which block access to nest sites (Wheeler et al. 2021, p. 14; Davis 2019, p. 58). All nests at Valle Nuevo failed to fledge young during both the 2020 (n=13) and 2021 (n=17) nesting seasons, and predation by the invasive mongoose is believed to be the cause (IBPCG 2021, p. 4; E. Rupp, Grupo Jaragua, in litt).

Loma Quemada, Dominican Republic, is the lowest elevation petrel nesting colony (Wheeler et al. 2021, p. A2-80). The habitat at Loma Quemada is similar to Loma del Toro, located approximately 12.4 mi (20 km) to the west, and it shares many of the same threats from habitat loss and degradation, anthropogenic fires, and predation and nest destruction by invasive mammals such as feral pigs (Wheeler et al. 2021, p. A2-80). As of October 2020, seven petrel nests have been discovered within the approximately 27-ac (11-ha) area. Two (29 percent) of these nests fledged young during the 2020–2021 nesting season (IBPCG 2021, p. 4). In the

previous (2019–2020) season, 33 percent of nests (2 of 6) were successful (IBPCG 2020, p. 5). Preliminary data from the 2021–2022 season indicates a further decline in nest success to 17 percent (E. Rupp, Grupo Jaragua, in litt).

The threats acting on the species on its breeding grounds on Hispaniola were described in detail in the proposed rule (83 FR 50560) and the SSA report (Service 2018, pp. 14–28). We received new information regarding invasive mammalian predators, harvesting of tree ferns, development, primary forest loss, terrestrial mining, coastal and offshore energy development, and climate change that provide a better understanding of the imminence and magnitude of the threats acting on the species and its habitat.

Introduced mammals such as mongoose, dogs, cats, and pigs on the breeding grounds cause direct and indirect mortality to adult petrels and chicks on the nest. New information from camera trap studies near nest burrows shows the threat is more prevalent and imminent than previously described. Some of the survey results documented dogs and mongoose depredating black-capped petrel chicks and adults. Abandonment of an active petrel nest (i.e., a nest with an egg or chick) due to repeated incursions by a mongoose was recently documented in the Dominican Republic (IBPCG 2019, p. 4). Mongoose predation was observed between early March and late May, resulting in the mortality of at least seven petrel chicks in Valle Nuevo during the 2020–2021 breeding season (Grupo Jaragua 2021, pp. 3–4). No nests in Valle Nuevo were known to be successful over two recent seasons (2020 and 2021), largely due to mongoose predation (IBPCG 2021, p. 1; E. Rupp, Grupo Jaragua, in litt).

Recent camera trapping in the Pic La Visite colony showed that a single dog depredated 18 of 35 known active nests in 2021 (Brown and Jean 2021, pp. 4–5). At least nine dogs also killed at least 11 adult black-capped petrels during the 2020–2021 breeding season (Brown and Jean 2021, p. 5; Satgé 2021, p. 2; Grupo Jaragua 2021, p. 2).

Feral cats also affect the petrels on their nesting grounds. The recent loss of at least nine active petrel nests in the Dominican Republic was attributed to a single feral cat (IBPCG 2019, p.

4). Across the nesting sites that have been surveyed in Haiti and Dominican Republic, new information indicates the threat of introduced mammals on the black-capped petrel is more imminent than described in the 2018 proposed rule. The magnitude of this threat is greater than previously documented with potential catastrophic effects to reproduction during a nesting season.

In petrel nesting areas of Haiti, harvesting of tree ferns to sell as substrate for ornamental plants has increased (A. Brown, in litt.). This activity disrupts and destabilizes soil in the vicinity of nest burrows, directly disturbing nests and potentially leading to burrow collapse. At least 14 active nests at 1 site were destroyed during the 2020–2021 nesting season due to tree fern harvesting activities (Brown and Jean 2021, p. 4).

We have new information associated with development on Hispaniola, particularly around Pedernales, Dominican Republic, a coastal area along the southwestern border of Dominican Republic and Haiti (DGAPP 2021, entire). Construction has begun on a large-scale development that will include an international airport, hotels, roads, and other infrastructure associated with tourism and recreation. This development is about 18 mi (29 km) from two nesting areas (Loma del Toro and Loma Quemada) and is along the petrel's flight path between nesting and foraging areas at sea. Impacts to the species may include those associated with artificial lighting and collisions with structures and aircraft.

Loss and degradation of nesting habitat due to deforestation continues to be one of the most significant and persistent threats to the black-capped petrel (Goetz et al. 2012, entire; Wheeler et al. 2021, pp. 12–16). Primary mechanisms of deforestation in the region include urbanization, clearing of land for pastures or agriculture, felling of trees for building materials, and charcoal production. Estimates of current deforestation, which were considered in our 2018 proposed rule, on Hispaniola range from over 90 percent for the Haitian portion to slightly less than 90 percent for the Dominican Republic portion (Castro et al. 2005, p. 7; Simons et al. 2013, p. S31; Churches et al. 2014, entire). Deforestation in the Haitian nesting areas is particularly

significant for the black-capped petrel, given that up to 70 percent of all active nest sites of the species occur within Haiti (Goetz et al. 2012, p. 5; Wheeler et al. 2021, p. 10). New information projects that all primary forests within Haiti are to be lost by 2035 (Hedges et al. 2018, entire).

Recent quantitative assessments of deforestation in the Dominican Republic also indicate that the rate of deforestation in and around petrel nesting colonies and areas of suitable nesting habitat has accelerated in recent years, ranging from 3.8 percent to 56 percent in the period 2000–2018 (Lloyd and Leon 2019, p. 5; Satgé et al. 2021, p. 583). We also received new information regarding deforestation due to fires in the Dominican Republic. The frequency and intensity of fires in and around petrel nesting areas has increased in recent years, further exacerbating and contributing to deforestation and habitat degradation in the region (Batlle and Ramon 2021, p. 36; IBPCG 2021, p. 1). The impacts from forest fires create conditions for invasive plant species, such as the terrestrial fern (*Dicranopteris pectinata*), to colonize and block access to nesting substrate and burrows (Wheeler et al. 2021, p. 14).

New information has been provided regarding mining of rare earth elements (REE) on Hispaniola. “Economically significant” amounts of REE were recently discovered in Sierra del Baboruco, Dominican Republic, in association with former bauxite mines and adjacent areas within 5 mi (8 km) of the Loma Quemada nesting area (Proenza et al. 2017, p. 1321; Proenza et al. 2021, p. 21). These products are in high demand globally, as they are essential for production of numerous modern technologies, including cell phones, solar cells, and electric vehicles (Dutta et al. 2016, p. 183; Proenza et al. 2017, p. 1321). Global demand of REE is increasing at the rate of 5 percent per year, requiring a steady and dependable supply of these minerals in the future (Dutta et al. 2016, p. 184). At the time of our 2018 proposal, we noted that the rapidly increasing global demand for REE, and the substantial economic importance of the mining sector to the Dominican Republic, likely foretold a resurgence and expansion of large-scale mineral exploration and extraction in the region (Dutta et al. 2016, p. 185; Redwood 2015, p. 12). Since that time, the Government of the Dominican Republic established the “Reserva Fiscal Ávila”, an

area of 36,744 ac (14,876 ha) designated for the exploration, evaluation, and development of REE reserves in the Sierra del Batoruco (Proenza et al. 2021, p. 22). This area is approximately 3 miles (5 km) from the Loma Quemada nesting area.

We also received new information regarding planned offshore wind energy projects that fall within the black-capped petrel's range. An area currently proposed for development off the coast of North Carolina overlaps with the species' core foraging area along the Gulf Stream and nutrient-rich waters (Avangrid 2022, p. 5). Future wind energy development in the Gulf of Mexico is anticipated. Studies have been completed to identify areas for potential renewable energy development; Texas and Louisiana have some of the highest wind capacity in the northern Gulf of Mexico (BOEM 2022a, entire; BOEM 2022b, entire). Offshore wind projects may affect the species through collisions with turbines, artificial lighting, displacement, and disturbance to the marine environment and prey species near turbines. For example, changes in turbidity may influence predator-prey interactions, with predators being attracted and prey avoiding affected areas (Van Berkel et al. 2020, pp. 113–114).

Offshore oil and gas activity may also affect the species while on its foraging grounds at sea. Extensive oil and gas activity occurs in the northern Gulf of Mexico. With the expansion of the species' documented range to include this area, the species may be at greater risk of encountering impacts from oil and gas activities than previously described (Satgé et al. 2019, entire).

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to list the black-capped petrel as a threatened species. We will consider information from all interested parties. We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other

governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the new information associated with this proposed rule.

We particularly seek comments concerning new information presented in this *Federal Register* document and its relationship to the status of the black capped petrel and any other information. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

Comments should be as specific as possible. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Because we will consider all comments and information we receive during the comment period, our final determination may differ from the proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2018-0043 and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Martha Williams,
Director,
U.S. Fish and Wildlife Service.

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